

**AMENDING FORMULA
CURRENT ASSISTED STOCK
REGULATIONS TO (1) EXPRESSLY
STATE THE IMPORTANCE OF
ACCURATELY REPORTING SUCH
STOCK AND THE CONSEQUENCES OF
NOT DOING SO AND (2) ALLOWING
UNDERCOUNTS TO BE SET-OFF
AGAINST OVERCOUNTS
(NAHASDA NEGOTIATED RULE MAKING)**

ISSUE

Currently HUD is administratively seeking from a significant number of tribes and TDHEs repayment of NAHASDA Indian Housing Block Grant monies for previous year "over funded" allocations. However, HUD has refused to set off against such over payments any "under funded" allocation for those same years.

In the allocation formula tribes and TDHEs currently receive funding for formula current assisted stock. Sections §§1000.312 and 314 of the NAHASDA regulations define Formula current assisted stock as (1) current assisted stock that is owned or operated pursuant to an ACC and under management as of September 30, 1997, as indicated in the Formula Response Form, (2) 1937 Act units in the development pipeline when they become owned or operated by the recipient and are under management as indicated in the Formula Response Form, or (3) Section 8 units where their current contracts have expired and the Indian tribe continues to manage the assistance in a manner similar to the Section 8 Program as indicated on the Formula Response Form.

Many TDHEs and Tribes, since the commencement of the NAHASDA program, have failed to correctly report such stock and have in the same year either on such occasions over reported, under reported or both. The regulations currently do not expressly state what the consequences are of such misreporting.

Until recently HUD failed to monitor or verify the required reporting. After being advised of this problem in an Office of Inspector General program audit in 2001, HUD has now taken some steps to try to verify current reporting and review or audit past reporting. Though HUD currently has not developed a procedure to fully verify and audit such reporting, it has made some findings. According to those findings a significant number of tribes and TDHEs have either over reported or over reported and underreported formula current assisted stock on Formula Response Forms. HUD has requested those tribes and TDHEs to voluntarily agree to deduct the overpayments over the next five years from their future Indian Housing Block Grant funding.

However, HUD has refused to allow any set off of under counting against over counting even when such miscounting occurs in the same year. HUD has threatened to unilaterally adjust these recipients' future grant if a voluntary repayment schedule is not developed.

HUD and tribes should agree that as long as current assisted stock is counted in the formula that every reasonable and fair effort be taken by recipients to accurately report the numbers of such stock and HUD to do the same in trying to verify such reporting.

HUD and tribes should agree that with clear and specific notice in both the regulations and the Formula Response Form that discovery of net over counting may result in sanctions, repayment of allocated grant funds or reduction or withdrawal of future grant funds.

HUD and tribes should agree that there should be a three (3) year limitation on HUD to challenge such reporting.

HUD and tribes should also agree that where an undercounting and an overcounting is discovered for the same year that it is fair and standard auditing practices to allow the undercount to be set off against the over count.

RESOLUTION

The following amended and new provisions should be made to the current NAHASDA regulations.

§ 1000.315 What could happen if formula current assisted stock is misreported by recipients.

- (a) Recipients need to take all steps necessary to insure that they accurately report formula current assisted stock on Formula Response Forms.
- (b) HUD will take reasonable steps to advise recipients of the importance of correctly reporting the formula current assisted housing stock and the possible consequences of error. This includes, but is not limited to, HUD expressly stating on the Formula Response Form the possible consequences of misreporting formula current assisted stock.
- (c) HUD may propose Formula Current Assisted Stock figures on individual Formula Response Forms but recipients are responsible to verify and correct those figures and to insure that the Formula Response Form they verify is accurate.
- (d) HUD may for up to three years challenge Formula Current Assisted Stock figures on Formula Response Forms.

(e) If a recipient has overcounted and undercounted Formula Current Assisted Stock in the same year, the undercount may be credited against the overcount.

(f) If a recipient had agreed to a repayment or reduction of future grants prior to September 1, 2003 because of an over count and that payment or reduction has not been implemented or fully carried out and there is an undercount as described above, the recipient will be allowed to reduce that repayment or reduction by the appropriate undercount set off.